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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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MAHMOUD HENDI and ESI SECURITY
SERVICES, INC.,

Plaintiffs,

v.

STATE OF NEVADA ON RELATION OF
THE PRIVATE INVESTIGATORS
LICENSING BOARD, KEVIN INGRAM,
LORI IRIZARRY, JASON WOODRUFF,

Defendants.

Case No. 3:17-cv-00633-LRH-VPC

ORDER

Defendants State of Nevada on relation of the Private Investigators Licensing Board (“Board”), Kevin Ingram, Lori Irizarry, and Jason Woodruff move to dismiss plaintiffs Mahmoud Hendi and ESI Security, Inc.’s complaint. ECF No. 4. The plaintiffs opposed the motion, and the defendants filed a reply. ECF Nos. 8, 12. The court now grants the motion to dismiss, finding the complaint fails to meaningfully distinguish between the multiple defendants in regards to the five claims for relief and the multiple plaintiffs in regards to the alleged damages.

I. BACKGROUND

Hendi owns ESI Security, which provides private security services for businesses, individuals, and special events. ECF. No. 1, Ex. 2. Because ESI Security offers services including private patrol officers, it is regulated by the Board. *Id.* Ingram serves as the Board’s

1 executive director, and Irizarry serves as the Board's deputy executive director. *Id.* Woodruff
2 works as an investigator for the Board. *Id.*

3 Hendi and ESI Security sues the Board, Ingram, Irizarry, and Woodruff, alleging five
4 causes of actions: (1) intentional interference with contractual relations, (2) interference with
5 prospective business advantage, (3) violation of 42 U.S.C. § 1983 based on the Privileges and
6 Immunities Clause of the Fourteenth Amendment, (4) injunctive relief, and (5) defamation per
7 se. *Id.*

8 The claims stem from occurrences related to an administrative proceeding held by the
9 Board. *See id.* ESI Security accrued several notices of violations from the Board, prompting it to
10 enter into a settlement agreement to resolve the notices. *Id.* Under the settlement agreement, ESI
11 Security agreed to pay certain fines and attorney fees according to a schedule outlined in the
12 agreement. *Id.* It also agreed to an eighteen-month probationary period, during which ESI
13 Security agreed to surrender its license if it were found guilty upon any new notices of violations
14 by way of a hearing in front of the Board. *Id.*

15 A few months later, ESI Security received a new notice of violations because its sister
16 company failed to register an employee with the Board. *Id.* ESI Security sought a hearing before
17 the Board. *Id.* A complaint was then served on ESI Security, alleging that ESI Security failed to
18 make timely payments under the settlement agreement and requesting that ESI Security's license
19 be revoked. *Id.*

20 Sometime thereafter, the defendants allegedly contacted ESI Security's existing and
21 prospective customers. *Id.* The defendants allegedly communicated to the customers that ESI
22 Security: (1) was going to lose its license; (2) was using non-registered employees, (3) was
23 overcharging for its services, and (4) was understaffing in violation of a contract. *Id.* The
24 defendants then allegedly advised ESI Security's customers to seek a different company for
25 security services. *Id.*

26 The Board then conducted a hearing on both the notice of violations and the allegedly
27 late payments. *Id.* It eventually found ESI Security guilty of the new violations but declined to
28 revoke ESI Security's license. *Id.* The Board also found that ESI Security did not make untimely

1 payments. *Id.* The Board ultimately ordered ESI Security to pay a fine and reasonable attorney
2 fees. *Id.* ESI Security has appealed the decision. *Id.*

3 **II. LEGAL STANDARD**

4 Despite the matter initially being filed in state court, Federal Rule of Civil Procedure
5 12(b)(6) governs this matter. *See Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1021 (9th
6 Cir. 2013) (citing *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009)).

7 A party may seek the dismissal of a complaint under Rule 12(b)(6) for failure to state a
8 legally cognizable cause of action. *See Fed. R. Civ. P. 12(b)(6)* (stating that a party may file a
9 motion to dismiss for “failure to state a claim upon which relief can be granted[.]”). To survive a
10 motion to dismiss for failure to state a claim, a complaint must satisfy the notice pleading
11 standard of Federal Rule 8(a)(2). *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,
12 1103 (9th Cir. 2008). Under Rule 8(a)(2), a complaint must contain “a short and plain statement
13 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 8(a)(2)
14 does not require detailed factual allegations; however, a pleading that offers only “‘labels and
15 conclusions’ or ‘a formulaic recitation of the elements of a cause of action’” is insufficient and
16 fails to meet this broad pleading standard. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
17 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

18 To sufficiently allege a claim under Rule 8(a)(2), viewed within the context of a
19 Rule 12(b)(6) motion to dismiss, a complaint must “contain sufficient factual matter, accepted as
20 true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at
21 570). A claim has facial plausibility when the pleaded factual content allows the court to draw
22 the reasonable inference, based on the court’s judicial experience and common sense, that the
23 defendant is liable for the alleged misconduct. *See id.* at 678-679 (stating that “[t]he plausibility
24 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that
25 a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with
26 a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement
27 to relief.”) (internal quotation marks and citations omitted).

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1 Further, in reviewing a motion to dismiss, the court accepts the factual allegations in the
2 complaint as true. *Id.* However, bare assertions in a complaint amounting “to nothing more than
3 a formulaic recitation of the elements of a . . . claim . . . are not entitled to an assumption of
4 truth.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at
5 698) (internal quotation marks omitted). The court discounts these allegations because “they do
6 nothing more than state a legal conclusion—even if that conclusion is cast in the form of a
7 factual allegation.” *Id.* “In sum, for a complaint to survive a motion to dismiss, the non-
8 conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly
9 suggestive of a claim entitling the plaintiff to relief.” *Id.*

10 **III. DISCUSSION**

11 The defendants first argue the complaint must be dismissed because it fails to distinguish
12 between the individual defendants and the individual plaintiffs in regards to the multiple claims
13 and alleged damages. ECF No. 4 at 4. The court agrees and therefore does not address the
14 defendants’ remaining arguments for dismissal.

15 The complaint inadequately notices the defendants of which legal claims are asserted
16 against them by failing to distinguish between the multiple defendants and the multiple plaintiffs
17 in the factual allegations. “Courts consistently conclude that undifferentiated pleading against
18 multiple defendants is improper.” *Dunson v. Cordis Corp.*, No. 16-cv-03076-SI, 2016 WL
19 3913666, at *3 (N.D. Cal. July 20, 2016) (internal citations and quotations omitted); *see also*
20 *Volcano Developers LLC v. Bonneville Mortg.*, No. 2:11-cv-00504-GMN, 2012 WL 28838, at *5
21 (D. Nev. Jan. 4, 2012). In the complaint, the plaintiffs consistently attribute the factual
22 allegations to “defendants” or “individual defendants.” *See* ECF No. 1, Ex. 2. The plaintiffs also
23 allege damages to the “plaintiffs” in general rather than distinguishing how Hendi, an individual,
24 was harmed versus how ESI Security, a business, was harmed. *Id.* Further, the plaintiffs also fail
25 to indicate against whom each cause of action is asserted. *Id.* The court therefore dismisses the
26 complaint for failing to adequately inform each defendant of the claims against them due to the
27 undifferentiated nature of the allegations in the complaint. *See McHenry v. Renne*, 84 F.3d 1172,
28 1176 (9th Cir. 1996) (affirming the dismissal of an undifferentiated complaint for its failure to

1 “provide defendants with a fair opportunity to frame a responsive pleading.” (quoting the
2 district court’s order of dismissal).


3 **IV. CONCLUSION**

4 IT IS THEREFORE ORDERED that the State of Nevada on relation of the Private
5 Investigators Licensing Board, Kevin Ingram, Lori Irizarry, and Jason Woodruff’s motion to
6 dismiss (ECF No. 4) is **GRANTED**. The court dismisses the complaint without prejudice.

7 IT IS FURTHER ORDERED that Mahmoud Hendi and ESI Security, Inc. may have
8 thirty days from the entry of this order to file an amended complaint.

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10 IT IS SO ORDERED.

11 DATED this 7th day of December, 2017.

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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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